

# COUNTY OF YORK

## MEMORANDUM

DATE: July 1, 2004 (BOS Mtg. 07/13/04)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Application for exemption from real and personal property taxation pursuant to Code of Virginia §58.1-3651 – Marlbank Recreation Association

The Marlbank Recreation Association (MRA) owns real property located in York County at the following addresses. The land is currently assessed for real estate taxation at the values listed for a total of \$526,000. MRA was assessed for real estate taxes in the amount of \$ 4,300.26 for calendar year 2004. They have not reported ownership of any personal property on which local taxes could be assessed.

	<u>Assessed Value</u>	<u>Tax</u>
107 Old Landing Road	\$ 90,500	\$739.84
111 Old Landing Road	\$ 93,500	\$ 764.36
115 Old Landing Road	\$ 309,800	\$5,532.62
107 Harbour Drive	\$ 32,200	\$ 263.24
Total	<u>\$ 526,000</u>	<u>\$4,300.06</u>

MRA, following the procedure outlined in Code of Virginia §58.1-3651, is requesting exemption from real and personal property taxation. Such exemptions may be granted by the Board of Supervisors pursuant to Code of Virginia §58.1-3651 for the “real or personal property taxes, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes.” Further, “no exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.”

Code of Virginia §58.1-3651 further sets out the criteria which must be considered by the Board when adopting any such ordinance. I have repeated each of those criteria below, numbered consistently as set out in the state statute, and below each criteria, in italics, have set out the responsive information provided by MRA. That information is set out in a letter dated April 12, 2004 from Thomas Geary, MRA President (copy attached).

**1) Whether the organization is exempt from taxation pursuant to §501(c) of the Internal Revenue Code of 1954.**

*We are a 501(c)(7) organization. Attached is the IRS Form 990 for 2002. Part III states specifically the type of program services which we provide by which we qualify. We are incorporated in the State of Virginia.*

**2) Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Board to such organization, for use on such property.**

*We don't have a Virginia State Liquor license, but for private adult parties for members and guests, we do provide alcoholic beverages.*

- 3) Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders.**

*No officers or directors are salaried or paid for their services although we do reimburse for out-of-pocket expenses. A CPA accountant provides payroll services at cost.*

- 4) Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services.**

*The Marlbank Recreation Association deed is restricted so that assets obtained by disposal of any of its property accrue back to the local residents, not the organization.*

- 5) Whether the organization provides services for the common good of the public.**

*Form 990 Part III provides a description of our program service. We provide activities for youth and adults in the neighborhood. The properties – the building, pool, playground, ball field, tennis courts and pier slips – provide services duplicated in part by the county. They reduce the county's burden while enhancing county's property values.*

- 6) Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office.**

*Our operating policies restrict political activity. On a nonpolitical basis, we do provide meeting space for political organizations.*

- 7) The revenue impact to the locality and its taxpayers of exempting the property.**

*MRA did not provide a response to this question, however per the Commissioner of the Revenue, based on the current assessment of the four properties, the revenue impact to the County would be the loss of \$4,300.06 in real estate taxes.*

- 8) Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such resolution.**

*a) Our bylaws contain a nondiscrimination clause and has since the 1970s. We accept as members, as our deed from Mr. O'Hara requires, any residents of Marlbank Farm who wish to join as full, social or community members. We accept associate members from outside the Marlbank Farm community who wish to participate in summertime swimming pool and swim team activities.*

*b) Quoting from Code of Virginia 58.1-3284.1 which established tax exemption for automatic membership corporations (read homeowners associations): "All real*

*property used for open or common space pursuant to this section shall be construed as having no value in itself for assessment purposes. Its only value lies in the value that is attached to the residential or commercial property which has a right by easement, covenant, deed or other interest."*

*The MRA's real value to York County is by providing services which enhances the property attached to it – the Marlbank Farm and the York community to which we make our services available. Unlike automatic membership corporations, we must continue to provide a valuable service or cease-to-be.*

In addition, Code of Virginia §58.1-3651 requires that the ordinance state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. The classifications available are religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground. The classification that MRA seems to most closely fit is "public park and playground."

The reference in Dr. Geary's letter to Code of Virginia section 58.1-3284.1, and the tax exemption provided in the Code for subdivision common space, does not appear to apply to MRA's property, because as staff understands it MRA's property is not actually part of Marlbank Farms subdivision but is privately owned by MRA, and the right of residents of the subdivision to join the association is not guaranteed to them by virtue of their ownership of a subdivision lot. Instead, the right to join MRA is extended to them by virtue of MRA's own membership regulations that are guided by restrictions in the deed of gift from Mr. O'Hara. With the concurrence of the O'Hara family, those membership rights could be repealed at any time, which the County Attorney has opined means that MRA's property is not "open or common space" which is "part of a planned development" as required by the statute, and that the tax exemption afforded to true subdivision common areas by the statute does not therefore apply to MRA.

In the past, requests for exemption from real and personal property taxation required the Board to pass a resolution making a recommendation to the General Assembly who would in turn consider the request, and, if granted, would codify the exemption. Changes to the Code of Virginia have now passed the granting authority to the local governing body. The Code of Virginia includes the names of the organizations, together with the dates and section numbers of the adopted legislation for which the General Assembly granted real and personal property tax exemption prior to the change to the Code of Virginia. The list includes 1,001 organizations. I have not included copies of those pages from the state code, but they may be found in any copy of the Virginia State Code as §58.1-3650.1 through 58.1-3650.1001.

Furthermore, section 58.1-3651 does not define what is meant by "public park and playground purposes" (the proposed tax exemption category), whether for example a recreational facility must be open without restriction to the all members of the public in order to qualify for a tax exemption under that heading. However, a perusal of the names of the organizations previously granted exemptions by the General Assembly prior to January 1, 2003, before authority to grant such exemptions was passed to local governments, suggests that other organizations similar to MRA have received tax

exemptions in the past, although the list of names does not reveal anything about the other organizations' membership restrictions. See, for example, exemptions granted to "Property of Holmes Run Acres Recreation Association, Inc." (2001), and to "Property of Walden Glen Swim and Racquet Club, Inc." (2001). Note that a property tax exemption was granted in 2002 to Running Man Recreation Association, Inc., of York County, even though the information provided to the County at the time of the application indicated that membership was restricted to residents of Running Man. It appears, then, that having a restricted membership policy did not prevent the General Assembly in years past from granting a property tax exemptions under the heading of "public park and playground purposes"

Proposed Ordinance No. 04-15 has been prepared for the Board's consideration. If adopted, this ordinance will grant exemption from real and personal property taxation to the Marlbank Recreation Association on the basis of use for public park and playground.

Please let me know if you have any questions.

White/3737

#### Attachments

- Letter from Thomas Geary, MRA President dated April 12, 2004
- Proposed Ordinance No. 004-15